



POLICE DEPARTMENT

September 4, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer John Massari  
Tax Registry No. 921014  
Transit Bureau District 3  
Disciplinary Case No. 2013-10799

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The above-named member of the Department appeared before the Honorable Amy J. Porter on April 9, 2014, and before me on July 29, 2015, charged with the following:

1. Said Police Officer John Massari, on or about June 1, 2012, at approximately 1647 hours while assigned to the Transit Bureau District 3 and on duty in the vicinity of [REDACTED], was discourteous to Gregory Townsend in that he stated in sum and substance, WHAT GIVES YOU THE FUCKING RIGHT TO DOUBLE PARK IN MY CITY? YOU'RE PARKED NEXT TO A FUCKING FIRE HYDRANT. GIVE ME A REASON WHY I SHOULDN'T GIVE YOU A FUCKING TICKET. YOU DON'T HAVE A FUCKING REASON BECAUSE YOU DON'T KNOW ONE. GET IN YOUR CAR AND GET THE FUCK OUT OF HERE. DON'T EVER LET ME FUCKING CATCH YOU AGAIN OR I'LL GIVE YOU A TICKET.

P.G. 203-09, Page 1, Paragraph 2- PUBLIC CONTACT-GENERAL

The Civilian Complaint Review Board (CCRB) was represented by Heather Cook, Esq., and Respondent was represented by John Tynan, Esq.

Respondent through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

Subsequent to taking testimony in this case on April 9, 2014, ADCT Porter resigned from her position with the Department. The matter was re-assigned to me in July 2015, at which time I reviewed the entire transcript, along with the exhibits, from the first day of trial. On July 29, 2015, I presided over the taking of additional testimony and closing arguments. After considering the entire evidence presented at trial, I submit the following report and recommendation.

### DECISION

Respondent is found Guilty.

### SUMMARY OF EVIDENCE PRESENTED

#### The CCRB's Case

CCRB called Gregory Townsend, Jaqueline Townsend, and John Kelly as witnesses. Mr. Townsend testified that on the day of the incident, he and his wife Jaqueline were visiting New York from Illinois. They were driving a rental car with Texas license plates. Mr. Townsend stated that he and his wife drove to the fish market on [REDACTED] so that he could run inside and purchase some takeout food. (Tr. 13).

When they first arrived, there were no parking spots available in front of the location. After driving around the block one time in an unsuccessful attempt to find a spot, Mr. Townsend admitted that he double-parked in front of the fish market and ran inside for less than five minutes. (Tr. 15, 43). CCRB offered into evidence three photographs depicting the area in front of the market (CCRB Ex's. 1A, 1B, 1C), and Mr.

Townsend marked the approximate location of his car. Mr. Townsend also stated that there were several other cars double-parked in front of the market, and claimed that he did not realize he was parked by a hydrant until he was confronted by Respondent. (Tr. 18).

As he was returning to his car with his purchase, Mr. Townsend was called over by Respondent, whose marked police car was directly behind the rental car. (Tr. 15). Mr. Townsend testified that he walked behind his car to where Respondent was standing, and that Respondent pointed his finger in Mr. Townsend's face and said, "Who gave you permission to double-park in my fucking city? I should give you two fucking tickets, one for the hydrant and one for double-parking. Give me a reason I shouldn't give you two fucking tickets." (Tr. 17-18). According to Mr. Townsend, Respondent was cursing loudly at him as he repeated these comments several times, saying "fuck" between five and ten times. (Tr. 18). People walking by were shaking their heads. Rather than argue with Respondent, Mr. Townsend stated that he listened quietly to Respondent's cursing. Respondent then stated, "The only reason I'm not giving you a ticket for the hydrant and double-parking is because I'm transferring a fucking prisoner. Get in your car and leave and don't ever let me fucking see you again." (Tr. 23). Mr. Townsend did return to his car and drove away from where he had parked, but paused at a red light at the corner to look in the rear view mirror to see what Respondent was doing; he saw Respondent remove a prisoner from the police car and escort him down into the subway. (Tr. 23).

Ms. Townsend testified, and essentially corroborated her husband's account of what happened that day. From her seat in the car, she could see Respondent pointing his finger and yelling at her husband, but couldn't make out too much of what was being said

because of the noise outside. (Tr. 65, 76). Ms. Townsend did testify to hearing Respondent say to her husband, "Why shouldn't I give you an f'ing ticket?" (Tr. 75).

Mr. Kelly, who stated that he did not know any of the parties involved in the incident prior to that day, also testified for CCRB. He explained how he had been stopped by a female police officer for entering the subway without paying the fare, though he claimed it was only because his MetroCard malfunctioned. (Tr. 82-83). Kelly acknowledged that he was "freaked out" about being in handcuffs. (Tr. 101). As Kelly was being escorted to the station house in a car where Respondent was the front passenger, he observed Respondent exit the vehicle and start "yelling aggressively" at a male black from the car in front of them. (Tr. 89). Respondent got "pretty close" to the male he was yelling at. (Tr. 96). Kelly stated that it wasn't that loud outside, and he heard Respondent say "fuck" more than once, including something to the effect of, "Why the F are you parked there." (Tr. 89, 103-104). Kelly added that he believed Respondent was upset because the other car had taken the parking spot where Respondent wanted to stop. (Tr. 99). After the incident, Respondent escorted Kelly down the subway stairs to the precinct. (Tr. 98).

#### Respondent's Case

Respondent, appointed to the Department in 1997, testified on his own behalf. He denied using profanity in his conversation with Mr. Townsend. (Tr. 125). According to Respondent, he was in the front passenger seat of a police car that was transporting a prisoner to the Transit District 3 station house in connection with a farebeat arrest. As the car pulled up near the entrance to the precinct, Respondent observed that there was a

car double-parked by a hydrant in the area where Respondent's car would normally have stopped in order to have easy access to the entrance to the station. (Tr. 120-121, 147).

Respondent exited his vehicle and approached the other car, but there was no one in the driver's seat, only a passenger. Respondent instructed the passenger that the car needed to be moved, but received no response. (Tr. 122). About a minute later, Mr. Townsend, with one hand holding food and the other in his pocket, appeared and started walking toward Respondent. Respondent ordered Mr. Townsend to remove his hand from his pocket, and he immediately complied. (Tr. 123). Respondent then informed Mr. Townsend that he needed to move the car or he would be ticketed. Mr. Townsend, "somewhat aggressively," protested that he had just been inside getting food, and then walked to his car and got in the driver's seat. (Tr. 123-125). Respondent, too, returned to his vehicle, and then waited an additional few minutes, before Mr. Townsend finally drove off. (Tr. 125). The police car pulled in, and Respondent escorted the prisoner downstairs for arrest processing. Respondent testified that he interpreted Mr. Townsend's delay in driving off as being spiteful, as if Mr. Townsend were "a petulant child." (Tr. 126).

Respondent acknowledged that when he was interviewed by CCRB on October 1, 2012, he stated that he had no memory of this incident. But Respondent explained that his memory was somewhat refreshed now by seeing and hearing the testimony of CCRB's witnesses on April 9, 2014. (Tr. 132-134, 144).

FINDINGS AND ANALYSIS

The only issue in this case is whether CCRB has proven that Respondent was discourteous in his dealings with Mr. Townsend. The three CCRB witnesses all testified that they heard Respondent curse at Mr. Townsend; Respondent denies that accusation, claiming that he did not use any profanity during the incident. After carefully considering the testimony of all the witnesses, this tribunal is persuaded that CCRB has met its burden.

The testimony of the three CCRB witnesses was consistent and plausible. They each described Respondent as behaving loudly and aggressively toward Mr. Townsend, who stood there quietly and did nothing to provoke Respondent. Mr. Townsend's testimony regarding Respondent's "permission to double-park in my fucking city" comment is believable in light of the Texas license plates on Mr. Townsend's car. Similarly, his testimony that Respondent said he was "transferring a fucking prisoner" is supported by the evidence that Respondent did, indeed, escort Kelly down into the station house.

Counsel for Respondent did raise certain credibility issues regarding CCRB's witnesses. He correctly noted that Mr. Townsend's decision to double-park at the location was conduct worthy of a hefty fine. Counsel also argued that Mr. Townsend's delay in driving off suggested a "petulance" on his part during this encounter. And Kelly, the independent eyewitness, had a motive to provide testimony adverse to the police since he was upset at having just been arrested. But this tribunal is not persuaded that any of these potential credibility issues are strong enough to undercut the witnesses' straight-forward and consistent accounts of what occurred in this case. Respondent, upset

that Mr. Townsend's car was double-parked in a spot near the entrance to the station-house, confronted Mr. Townsend in an overly aggressive manner, repeatedly using profanity in voicing his displeasure. Nothing in Respondent's testimony persuaded this tribunal otherwise, particularly in light of his original statement to CCRB three months after the incident in which Respondent claimed not to remember anything about this incident.

Accordingly, CCRB has met its burden of proving that Respondent was discourteous to Mr. Townsend, and I find Respondent Guilty.

#### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974).

Respondent was appointed to the Department on December 17, 1997. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

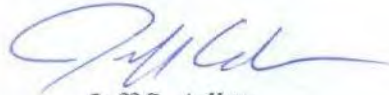
CCRB asks for a penalty of 10 vacation days. However, in a case CCRB, themselves, cited during the trial, *Disciplinary Case No. 78255-02* (July 16, 2003), the penalty imposed for discourtesy was forfeiture of five vacation days (where 18-year officer used profanity in addressing a civilian who Respondent believed made an inappropriate 911 call). There were similar results in *Disciplinary Case No. 11402-14* (January 29, 2015) (15-year police officer with no disciplinary history received penalty of five vacation days for being discourteous and disrespectful to individual, and using offensive language regarding that individual's ethnicity), and *Disciplinary Case No.*



9862-13 (June 17, 2014) (nine-year officer with no record forfeited five vacation days for discourtesy for uttering profanity at civilian).

Here, Respondent has avoided any disciplinary history during his 18 years with the Department. Although he was discourteous to Mr. Townsend, he did not issue him a ticket and there was no physical confrontation. To be sure, there needs to be some accountability for Respondent's overly aggressive behavior and use of profanity during this encounter, but forfeiture of 10 vacation days is excessive here. Taking into account the totality of circumstances, including Respondent's history, I recommend that Respondent's disciplinary penalty should be the forfeiture of five (5) vacation days.

Respectfully submitted,



Jeff S. Adler

Assistant Deputy Commissioner – Trials

**APPROVED**

OCT 13 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER JOHN MASSARI  
TAX REGISTRY NO. 921014  
DISCIPLINARY CASE NO. 2013-10799

Respondent received an overall performance evaluation rating of 4.0 "Highly Competent" in 2014, a 3.5 "Highly Competent/Competent" in 2013, and a 4.0 in 2012. He has received no medals or commendations.

[REDACTED]

[REDACTED]

[REDACTED] Respondent has no formal disciplinary history.

For your consideration.



Jeff S. Adler  
Assistant Deputy Commissioner - Trials